

## REMARKS

In an Office Action mailed July 8, 2008, the Examiner in charge of the application stated the status of the claims. Applicants noted a small inconsistency in this statement of claims pending, considered or withdrawn: Claim 28 (withdrawn) was not listed among the pending or withdrawn claims. Claims 1, 4-13, and 16-28 are pending, Claims 1, 4-12, 25 and 28 are withdrawn from consideration as being drawn to non-elected subject matter, and Claims 13, 16-24, 26, and 27 are under consideration. The Examiner withdrew the claim objection and the claim rejection under 35 U.S.C. § 103 in view of Applicants' prior response.

The Examiner rejected Claims 13, 16-24, 26 and 27 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The undersigned thanks the Examiner for the telephone conversation on September 18, 2008 during which the claim language was discussed. Claim 13 is amended to clarify that the cells used in the claimed composition are proliferating cells. The amendment to Claim 13 further clarifies that a composition, rather than a product-by-process, is claimed. Reconsideration is respectfully requested. To ensure that the Examiner considers Applicants' response, a Request for Continued Examination accompanies this paper.

The Examiner rejected Claims 13, 16-24, 26 and 27 under 35 U.S.C. §102(b) as being anticipated by Reubinoff *et al.* (US 2002/0068045). The Examiner correctly indicated that Reubinoff *et al.* discloses undifferentiated human ES cells. As clarified by the Amendment to Claim 13 and as discussed above, Claims 13, 16-24, 26 and 27 pertain to a composition, not a product by process. While the claimed composition includes human ES cells, it also includes other components. Because Reubinoff *et al.* does not disclose each and every element of the claimed composition, Reubinoff *et al.* cannot anticipate Claims 13, 16-24, 26 and 27. For instance, Reubinoff *et al.* does not disclose the recited apparatus configured to apply periodic strain. For the foregoing reasons, Reubinoff *et al.* does not anticipate Claims 13, 16-24, 26 and 27. Reconsideration is respectfully requested.

In response to an Office Action mailed July 3, 2006 imposing a restriction requirement under 35 U.S.C. § 121, the Applicants elected claims directed to the product. Based on the claim amendments above, Applicants respectfully request rejoinder into the application of withdrawn process Claims 1, 4-12, 25 and 28 after the elected composition claims are found allowable. As

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amended, all claims directed to the nonelected process require all the limitations of the broadest product claim. Rejoinder is respectfully requested.

**Fees**

A petition for a two month extension of time accompanies this response so that it will be deemed to have been timely filed. No other extension of time is believed due, but should any additional extension be due, in this or any subsequent response, please consider this to be a petition for the appropriate extension, and a request to charge the extension fee to Deposit Account No. 17-0055. No additional fees are believed due; however, if any fees are due, in this or any subsequent response, please charge Deposit Account 17-0055.

Respectfully submitted,

  
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